



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 586

IN THE MATTER
OF
HARRY L. BROUGHAM

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Harry L. Brougham ("Brougham") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 22, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Brougham. The Commission has concluded its inquiry and, on April 21, 1999, by a majority vote, found reasonable cause to believe that Brougham violated G.L. c. 268A.

The Commission and Brougham now agree to the following findings of fact and conclusions of law:

1. Brougham was, during the time relevant, a member of the Belchertown Water District Commission ("BWDC"). As such, he was a municipal employee as that term is defined in G.L. c. 268A, §1(g). Brougham has served on the BWDC since 1958.

2. The BWDC is an elected, three member board which oversees the operation of the Belchertown Water District ("District"). The BWDC meets monthly to review and approve bills and to authorize significant expenditures.

3. The BWD commissioners appoint a full-time paid superintendent. The superintendent oversees the day-to-day operation of the District Water Department.

4. The BWD commissioners authorized the BWD superintendent to contract with vendors for any emergency repairs,^{1/} and for routine maintenance jobs under \$1000, without first getting the approval of the commissioners.^{2/} The superintendent is responsible for certifying that the work performed by the contractors was completed satisfactorily. The commissioners do not inspect the contractor's work. The commissioners do, however, sign the weekly pay warrants authorizing the treasurer to pay the contractors hired by the superintendent. A minimum of two commissioners must sign the warrant before it can be paid. In addition, G.L. c. 41, §56 gives a board responsibility for determining that warrants submitted for payment are correct and that the work was done.^{3/}

5. M. Brougham Excavating is a sole proprietorship owned by Brougham's son, Mickey. Brougham does not have a financial interest in the business.

6. Between 1994 and 1997, M. Brougham Excavating performed work totaling \$34,470 for the District. During this time period, Brougham, as a BWD commissioner, signed 25

warrants approving a total of \$17,350 in payments for bills where M. Brougham Excavating was the payee.^{4/}

7. Except as otherwise permitted in that section,^{5/} G.L. c 268A, §19 in relevant part prohibits a municipal employee from participating as such in a particular matter in which to his knowledge he or an immediate family member has a financial interest.

8. The decisions by the BWDC to approve bills from M. Brougham Excavating were all particular matters.^{6/}

9. Because Brougham was substantially and personally involved in making the foregoing decisions, he participated^{7/} in those particular matters.

10. Each such decision involved a company owned by Brougham's son, an immediate family member. Brougham's son had a financial interest in those particular matters. Brougham was, of course, aware of those financial interests at the time he so participated.

11. Therefore, by participating in the payment decisions as described above, Brougham repeatedly participated in particular matters as a BWDC member in which to his knowledge his son had a financial interest, thereby violating §19.

12. Brougham did not realize that signing the pay warrants violated c. 268A.^{8/}

In view of the foregoing violation of G.L. c. 268A by Brougham, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings.^{9/} In disposing of this matter by this disposition agreement, Brougham waives all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: May 3, 1999

^{1/}The superintendent does not need the Commissioners' approval for contracts for emergency repairs regardless of the price.

^{2/}For scheduled maintenance work over \$1000 and large projects, the superintendent must obtain estimates from three bidders which he submits to the commissioners.

^{3/}General Laws, c. 41, §56 states: "The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be..."

4/ The District superintendent had certified that the work in relation to each bill had been satisfactorily performed.

5/ None of the exceptions applies here.

6/ "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

7/ "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

8/ Ignorance of the law is no defense to a violation of G.L. c. 268A. *In re Doyle*, 1980 SEC 11, 13. See also, *Scola v. Scola*, 318 Mass. 1, 7 (1945).

9/ The Commission chose not to impose a fine because it found somewhat mitigating that Brougham's action took place after the appropriate department head had certified the work was done satisfactorily. Even so, the Commission wants to emphasize that it does not consider a board's actions in authorizing warrants under these circumstances to be a mere "rubber stamping" of the department head's approval. Instead, G.L. c. 41, §56 requires board members to exercise independent responsibility in approving such bills. In the Commission's view, such action is significant (see *EC-COI-98-5*).